

REMARKS

Applicants respectfully request reconsideration of the present application in view of the foregoing amendments and in view of the reasons that follow.

Status of Claims

Claims 1-7, 9, 13, 15-17, 19-26, 32, 33 and 41 are allowed and claims 34, 35 and 37-40 are rejected. With this submission, claims 33, 37 and 40 are amended. Claims 8, 10-12, 14, 18, 27-31 and 36 were previously canceled. Claim 42 is newly added to recite the language that was deleted from Claim 33 and Claim 43 contains the language of Claim 35. Hence, upon entry of this paper, claims 1-7, 9, 13, 15-17, 19-26, 32-35 and 37-43 will remain pending and under active consideration.

Applicants do not believe that any subject matter has been canceled from the claims and not included in newly added claims, but the cancellation of any subject matter does not constitute acquiescence in the propriety of any rejection set forth by the Examiner. Applicants reserve the right to pursue the canceled subject matter of any claims in subsequent divisional applications.

This amendment adds, changes and/or deletes claims in this application. A detailed listing of all claims that are, or were, in the application, irrespective of whether the claims remain under examination in the application, is presented, with an appropriate defined status identifier.

Amendment to the Specification

Applicants have amended the specification to insert the priority information that was present on the Application Data Sheet filed at the time that the national stage application was filed under 35 U.S.C. § 371 or that was timely claimed in the international phase. See the Decision on Petition dated September 10, 2010, of record in the present file history.

Priority Claim

As noted in the Petition decision dated September 10, 2010, “foreign priority to EP 03023581.6 was timely claimed in the international phase.” Additionally, Applicants note that

the supplemental ADS filed on May 18, 2010 changed the Priority for this application. Accordingly, Applicants believe the priority to EP 03023581.6 is now properly claimed.

Claim Rejection- 35 U.S.C. § 112, first paragraph

Claims 34, 35 and 37-40 are rejected as allegedly failing to provide an enabling disclosure of specifically identified subject matter in the rejected claims. (Office Action, pages 3-7)

The Examiner states that the subject matter of Claim 33 is enabled but not a pharmaceutical composition (Claim 34) comprising a nucleic acid sequence encoding the binding construct of Claim 1 or a vector or a host comprising the nucleic acid or for a method of treating a disease by administering the nucleic acid, vector, or host cell (Claim 37). It is noted that Claim 35 is included in the rejection where the composition is a diagnostic composition but the rejection does not specifically state that Claim 35 is not enabled.

In an effort to expedite prosecution and without acquiescing to the propriety of the rejection, Applicants have deleted parts (b)-(d) in Claim 33, which should render the rejection moot for Claims 34 and 35. With regard to Claim 37, Applicants have deleted the recitation of a nucleic acid molecule, a vector and a host, which should also render the rejection moot for Claims 37-40. Therefore, Applicants respectfully request reconsideration and withdrawal of the rejection.

Applicants have added new Claim 42 to recite the deleted portions of the composition of Claim 33 which the Examiner has indicated to be enabled and added new Claim 43 to a diagnostic composition that corresponds to Claim 35. This latter claim was added because no specific basis was provided to reject the diagnostic composition in the rejection of the claims. Applicants request reconsideration and withdrawal of the rejection.

CONCLUSION

Applicants believe that all of the claims are in condition for allowance. The Examiner is invited to contact the undersigned by telephone if it is felt that a telephone interview would advance the prosecution of the present application.

The Commissioner is hereby authorized to charge any additional fees which may be required regarding this application under 37 C.F.R. §§ 1.16-1.17, or credit any overpayment, to Deposit Account No. 19-0741. Should no proper payment be enclosed herewith, as by a check being in the wrong amount, unsigned, post-dated, otherwise improper or informal or even entirely missing, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 19-0741. If any extensions of time are needed for timely acceptance of papers submitted herewith, Applicants hereby petition(s) for such extension under 37 C.F.R. §1.136 and authorizes payment of any such extensions fees to Deposit Account No. 19-0741.

Respectfully submitted,

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By  _____

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